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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/724,815	11/28/2000	Alexandre N. Terentiev	642-001	8209

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KING & SCHICKLI, PLLC  
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EXAMINER
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SOOHOO, TONY GLEN

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 12/04/2002

14

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/724,815

Applicant(s) #14

TERENTIEV, ALEXANDRE N.

Examiner

Tony G Soohoo

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1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 September 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 10-28, 39, 40, 42-55, 57-85, 94-97, 111-117 and 127-160 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 57-85, 94-97, 111-117 and 127-155 is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-15, 50, 51, 53, 54, 125, 126 and 156-160 is/are rejected.
- 7) ☒ Claim(s) 16-28, 39, 40, 42-49 and 52 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2458, 13.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. Claims 156-160 provides for the use of the respective systems of 1, 50, 55, 70, and 83, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 156-159 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

*ADP*

### ***Double Patenting***

2. Claims 1-8, 10-15, 50-51, 53-54, 125, and 126 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2, 9-11, 13, 15, 17-23, 25-26, and 50 of U.S. Patent No. 6416215. Although the conflicting claims are not identical, they are not patentably distinct from each other because whereas the claims of the application are constructed with open language of "comprising", the scope of the elements of the patented claims are readable upon the all of the elements of the application claims.

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The following table shows the corresponding application claims readable upon the U.S. patent claims.

-----Corresponding Claims -----

Application 09/724,815 Claim number(s)	U.S. Patent 6416215 Claim number(s)
1-2	1-2
3-6,	9-11
7	13
8	15
10-14	17-21
15	20, 25 or 50, a sealed container.
50-51, 126	22, 23
53-54	25-26
125	11

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***Allowable Subject Matter***

3. Claims 16-28, 39-40, 42-49, 52 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. Claims 55, 57-69; 70-85; 94-97, 111-117; 123-124; 127-130; 131-155 are allowed.

***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G Soohoo whose telephone number is (703) 308-2882. The examiner can normally be reached on 7:00 AM - 5:00 PM, Tues. - Fri.. The fax phone numbers for the organization where this application or proceeding is assigned

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are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Tony G Soohoo  
Primary Examiner  
Art Unit 1723

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**TONY G. SOOHOO**  
**PRIMARY EXAMINER**